Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act	)	
Of 1996	)	

REPLY COMMENTS OF QWEST CORPORATION

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SUMMARY

In this proceeding the Commission seeks comment on what is known as "circuit flipping," the practice whereby a CLEC requests that an existing special access circuit purchased pursuant to tariff from an ILEC be repriced at UNE rates. The Commission has previously held that circuit flipping is an acceptable practice under the Act, but only for circuits which are utilized to provide local exchange service. Unless a given circuit carries a "substantial" amount of local exchange traffic, it does not meet the statutory impairment test used in determining whether a particular network element needs to be unbundled. Accordingly, any request that a particular circuit be unbundled must include a certification by the CLEC that one of three measures of substantial local traffic are met. The Commission is seeking comment on whether the substantial local service requirement in its rules should be eliminated.

In these reply comments, Qwest addresses several issues raised by commenting parties in the opening comment round.

First, Qwest notes that, despite considerable rhetoric by CLECs, no one has seriously attempted to demonstrate that its ability to provide exchange access service will be impaired if the CLEC continues using competitive alternatives to flipped special access circuits, including purchasing special access services under tariff, self provisioning, purchasing from another carrier, or purchasing unbundled loops and transport and combining them in collocation space. The market for high capacity point-to-point circuits in those areas where CLECs provide exchange access is intensely competitive, and the impairment test is not met for CLEC provision of exchange access service. Arguments made by CLECs that they are entitled to flip special access circuits

to UNE prices in order to provide exchange access services are predicated on the false notion that the Act was enacted to give CLECs the opportunity to purchase as a UNE practically any function they desire, for any purpose. The Supreme Court in *Iowa Utilities Board* made it clear that this interpretation of the Act is not accurate, and that the "impairment test" established by Section 251(d)(2)(B) of the Act must act as a significant limiting principle on the ability of CLECs to demand the unbundling of network elements. CLECs have not demonstrated, nor have they really tried to demonstrate, that the impairment test is met in the area of utilization of special access circuits for the provision of exchange access.

Second, the legal arguments which various commenting parties make to support their demand that special access circuits be flipped to UNE prices for the provision of exchange access service are unavailing. The Communications Act is plain. A showing under the impairment test must focus on the service which the CLEC desires to offer. That is precisely the test applied by the Commission.

Third, the suggestion by some parties that termination liability provisions in some ILEC special access contracts should be voided by the Commission is not lawful. There has been no proceeding under Section 205 of the Act to declare such provisions unjust or unreasonable, nor could these tariff provisions be declared unlawful even after the Act's Section 205 procedures had been complied with. The termination liability provisions of Qwest's special access tariffs are entirely just and reasonable.

Finally, commenting parties' criticisms of Qwest's procedures for flipping circuits used for the provision of local exchange service are misplaced. Qwest's circuit flipping practices, outlined on Qwest's web site, are reasonable and lawful.

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REPLY COMMENTS OF QWEST CORPORATION

Qwest Corporation ("Qwest") hereby files its reply comments in the proceeding initiated by the Federal Communications Commission's ("FCC" or "Commission") January 24, 2001 Public Notice in the above-captioned docket.[1] In this stage of the proceeding, the Commission asks whether it should require incumbent local exchange carriers ("ILEC") to "flip" existing special access circuits from tariffed prices to unbundled network element ("UNE") prices for use in providing exchange access service.

In our initial comments, supported by a recently prepared report on *Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport*,[2] Qwest documented that, under the statutory impairment test established in Section 251(d)(2)(B) of the Telecommunications Act of 1996 (the "Act"), competitive local exchange carriers ("CLEC") could not justify demanding that existing high-capacity special access circuits previously purchased under tariff be priced as UNEs for use in the provision of special access or long distance service. Filings made by BellSouth[3] and SBC/Verizon[4] further

[1] See Public Notice, Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service, DA 01-169, rel. Jan. 24, 2001 ("Public Notice"). Comments were filed Apr. 5, 2001.

[2] See Attachment to the comments of the United States Telecom Association ("USTA").

[3] BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") at 23-28.

documented this fundamental conclusion. As the Commission has previously found,[5] there are numerous competitive alternatives available to CLECs wishing to carry traffic between large business customers and interexchange carriers' ("IXC") points of presence ("POP") over high-capacity facilities. The notion that CLECs might be impaired in their ability to provide exchange access service without being able to convert their existing high-capacity special access circuits to UNE prices finds no basis at all on the record or in the statute.

We emphasize here that a decision finding, properly, that no CLEC is impaired in providing exchange access by the inability to flip existing high-capacity special access circuits to UNE prices has no impact on the separate analysis of whether a CLEC is impaired in providing telephone exchange service. The Commission, in the Supplemental Order Clarification, properly found that the local exchange and exchange access markets were separate and distinct markets for purposes of Section 251(d)(2)(B) analysis.[6] Similarly, there is no necessary relationship between the issues in this proceeding and other proceedings involving the availability of high-capacity circuits. The limited issue in this proceeding, whether existing special access circuits can be converted to UNE prices for the provision of exchange access, can be decided without deciding the other issues.

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[4] Joint Comments of SBC Communications, Inc. and Verizon Telephone Companies ("SBC/Verizon") at 12-15.

[5] In the Matter of Implementation of the Local Competition Provisions Of the Telecommunications Act of 1996, Supplemental Order Clarification, 15 FCC Rcd. 9587, 9597 ¶ 18 (2000) ("Supplemental Order Clarification").

[6] Id. at 9594-95 ¶¶ 14-15.

Nothing submitted on the record in the initial round of comments changes the fundamental conclusion that CLECs are not impaired in their provision of exchange access if they cannot obtain special access circuits at UNE prices. Indeed, very few commenters even suggest that the statutory impairment test can be met for these circuits at all. To the contrary, commenters content themselves with claiming that exchange access is really not a separate market from the local exchange market,[7] that an impairment analysis conducted under Section 251(d)(2)(B) is really a "usage restriction" on how CLECs can utilize network elements,[8] that any CLEC may use any UNE for any telecommunications-related purpose at all,[9] that ILECs have been reluctant to grant requests that the price of special access circuits be reduced to UNE prices,[10] and generally with positing the basic assertion that more government regulation might somehow save CLECs from the consequences of their own poor business judgment.[11] Others content themselves with simply decrying ILEC market power as a philosophical concept, with no effort to ground such allegations in a factual record. In point of fact, no matter what the emotional appeal (or lack thereof) of these arguments, the fundamental fact remains undisturbed. Under Section 251(d)(2)(B) of the Telecommunications Act, CLECs have

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[7] Sprint Corporation ("Sprint") at 2-5; Global Crossing North America, Inc. ("Global Crossing") at 3-5; and see Norlight Telecommunications, Inc. ("Norlight") at 4-6; AT&T Corp. ("AT&T") at 4, 6, 11-12; Competitive Telecommunications Association ("CompTel") at 34-35; Focal Communications Corporation ("Focal") at 8; El Paso Networks, LLC ("El Paso") at 8-9.

[8] AT&T at 6-13; WorldCom, Inc. ("WorldCom") at 8-12; and see El Paso at 15.

[9] WorldCom at 6, 9; Sprint at 7-8; AT&T at 10-12.

[10] Association for Local Telecommunications Services ("ALTS") at 2-3, 4; WorldCom at 27-28; and see Joint Comments of Cbeyond Communications, Inc., E.spire Communications, Inc., KMC Telecom, Net 2000 Communications Services, Inc., Winstar Communications, Inc. and XO Communications, Inc. ("Joint Commenters") at 4-6, 8.

no right to demand that existing high-capacity special access circuits, purchased by CLECs from ILECs pursuant to lawfully filed tariffs (interstate as well as intrastate) be available at a below cost discount as UNEs in order to provide exchange access.

It therefore is critical to recognize the limited nature of this proceeding, and to place it in proper context. The only question posed herein is whether an existing tariffed special access circuit being currently used by a CLEC or an IXC to provide exchange access service can be "flipped" by a CLEC to a lower-priced UNE (with no change other than price) without running directly afoul of the statutory "impairment" text established in Section 251(d)(2)(B) of the Act and elaborated on by the Supreme Court in Iowa Utilities Board.[12] There are many complex and important issues on the horizon concerning the designation, costing and utilization of UNEs under the Act. This is not one of them. This proceeding involves what some competitors perceive to be a quirk, a loophole, in the Act which will permit them to make an extra profit at the expense of ILECs and the public. It is pure arbitrage. It is not interconnection.

I. PRICE DIFFERENTIALS BETWEEN TARIFFED SPECIAL ACCESS SERVICES AND SPECIAL ACCESS SERVICES PRICED AS UNEs DO NOT SUPPORT CLAIMS THAT CLECs ARE IMPAIRED IN THEIR PROVISION OF EXCHANGE ACCESS SERVICE WITHOUT ACCESS TO SPECIAL ACCESS CIRCUITS AT UNE PRICES

Some CLECs continue to argue that, because UNE prices for special access circuits are lower than the tariffed prices for the same circuits, this price differential by itself demonstrates impairment under the Act.[13] The argument is that impairment can be

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[11] See, e.g., BroadRiver Communications Corporation, et al. ("BroadRiver") at ii.

[12] AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

[13] See, e.g., Global at 9. And see Focal at 10, 14.

demonstrated by price differences without anything more.[14] This analysis is precluded by the Supreme Court's Iowa Utilities Board decision, which expressly rejected the Commission's prior holding "regarding any 'increased cost or decreased service quality'" or "establishing a 'necessity' and an 'impairment' of the ability to 'provide services.'"[15]

But of more consequence, it is universally agreed that, other than price, there is absolutely no difference between a tariffed special access circuit and a UNE special access circuit. CLECs concede this basic point -- often arguing that ILEC recalcitrance to convert special access circuits to UNE prices is proven because no more is involved in converting a circuit than making a billing change.[16] We submit the following very simple proposition: conversion of a circuit from its tariffed price to a UNE price can never meet the impairment test if the price differential is the sole reason for the claimed impairment. In the case of "flipping" special access circuits to UNE prices, this price differential is the only basis on which impairment is even claimed, and the impairment test is not met.

II. PARTIES' ARGUMENTS THAT THEIR ABILITY TO PROVIDE EXCHANGE ACCESS WILL BE IMPAIRED IF THEY DO NOT HAVE THE ABILITY TO FLIP A SPECIAL ACCESS CIRCUIT PURCHASED UNDER TARIFF TO UNE PRICES ARE SPURIOUS

Some commenting parties do attempt to demonstrate that some version of the impairment test is met in the case of flipping existing high-capacity special access circuits to UNE prices, although no party attempts to conform their argument to the

[14] Global at 9.

[15] AT&T v. Iowa Utils. Bd., 119 S.Ct. at 736.

[16] See, e.g., Focal at 13-14.

standards for impairment set forth in the Third Report and Order.[17] These commenting parties also suggest that the Commission should expand the category of "substantial" local exchange service as a prerequisite to flipping a high-capacity special access circuit to include point-to-point data services. These arguments document how far from reality these positions stray. For example:

- Norlight contends that it would be impaired without the ability to convert high-capacity special access circuits to UNE prices because it would not be able to provide ATM switching services unless it can make such a conversion.[18]
- BroadRiver's logic is that the UNE platform is circuit switched, which is correct, and it thereby contends that, without the availability of the UNE platform for data services which are not circuit-switched, it needs high-capacity UNE circuits.[19] But this argument misses the impairment standard altogether.
- Not a single commentor attempted to demonstrate that high-capacity special access circuits met the six impairment criteria established in the Third Report and Order.[20]
- To the extent that CLECs claim that they use high-capacity special access circuits purchased from ILECs to provide data services, these circuits are used either to provide private Intranets for large businesses or to enhance the CLECs' own

[17] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd. 3696 (1999) ("Third Report and Order").

[18] Norlight at 5-6.

[19] BroadRiver at 8-10.

[20] See note 17, supra.

packet networks (clearly there is no impairment here, as this market has been competitive for more than a decade).

- As the Commission has held in the past, Internet access is not a part of the provision of local exchange service.[21] In its Order on Remand, released April 27, 2001, the Commission clarified that Internet access is an information access service.[22] Thus, the Commission has properly found that Internet access service is not part of the "substantial local exchange" equation for determining the availability of a high-capacity special access circuit at UNE prices. This finding translates into the reasonable continuation of the Commission's policy that Internet access services do not qualify as part of local exchange service for calculating a CLEC's right to convert a high-capacity special access circuit to a UNE.
- This proceeding does not deal at all with copper loops. There are currently multiple "last mile" links to mass market end users for data providers: Via line sharing of the high frequency portion of copper loops, unbundled access to standard copper loops (the entire loop), access to subloops, and access to high-capacity loops. Through these types of available functions, CLECs already have access to ILEC facilities which enable them to provide broadband data services.

[21] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Order on Remand, 15 FCC Rcd. 385, 391-92 ¶ 16 (1999); vacated and remanded, WorldCom, Inc. v. FCC, Case No. 00-1002 (Apr. 20, 2001, D.C. Cir.).

[22] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131, rel. Apr. 27, 2001.

These facilities and functions have never been purchased as high-capacity special access lines -- and they are facilities which are not affected by the instant docket. They will be available to CLECs no matter what the outcome of this proceeding.

- Some parties seek to avoid a proper impairment analysis altogether by requesting that the Commission define the entire "EEL" (enhanced extended loop) as a single UNE. Of course, even as a single UNE, an EEL would still need to meet the impairment analysis, which it cannot.[23] Moreover, in defining UNEs, the Commission has always used the natural segments of the network to distinguish what is required to be offered to construct a network in lieu of a CLEC building its own network. An EEL cannot be made to fit into this construct, as it is clearly a combination of other UNEs, not a UNE itself.
- CLECs still have the ability to assemble their networks from individual UNEs and to provide data services with these UNEs -- nothing in the Commission's rules limits the use to which a CLEC may devote a particular UNE. This essential fact bears repeating because it is so often overlooked. The high-capacity special access conversion issue involves combinations of UNEs and conversion of tariffed circuits to UNE prices, not the use of UNEs. Even those parties who still contend that their ability to provide exchange access service would be impaired by the inability to obtain special access circuits at UNE prices never address the issue of why the current UNEs which they can purchase at UNE prices would not permit them to provide any service which the existing tariffed service does not permit.

As an economic matter, the arguments of these commenting parties simply do not come close to meeting a properly interpreted impairment standard. In fact, none of the arguments attempt to provide any of the documentation called for by the Third Report and Order which is required to show impairment under the Commission's rules.

III. THE ARGUMENT THAT THE IMPAIRMENT TEST CAN BE MET BY "ASSOCIATION" WITH UNEs USED TO PROVIDE TELEPHONE EXCHANGE SERVICE DISTORTS THE NATURE OF THIS PROCEEDING

Some commenters, apparently recognizing that an actual review of the exchange marketplace would affirm the Commission's decision that carriers are not impaired in their ability to provide exchange access service if they do not have the ability to "flip" special access circuits to UNE prices, take a different tack. These commenters argue that, because the Commission has already determined that CLECs would be impaired in their ability to provide telephone exchange service in the absence of access to high-capacity special access circuits at UNE prices, this finding miraculously requires similar impairment findings with regard to exchange access service.[24] This argument, while superficially attractive at some level, is predicated on several critical misconceptions.

As AT&T is a primary advocate of this position, we examine AT&T's argument in some detail. At its core, AT&T's position simply refuses to acknowledge the legitimacy of the Supreme Court's mandate in Iowa Utilities Board, in which the Court concluded that the statutory "impairment" standard must be interpreted and applied as a substantial limiting principle on the ability of CLECs to demand pieces of an incumbent's network at UNE prices.

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[23] Again, this proceeding deals with high-capacity special access circuits. Voice grade circuits are not under consideration.

[24] See, e.g., AT&T at 6-12.

AT&T's fundamental argument is that, because special access circuits used to provide exchange access and special access circuits used to provide telephone exchange service are indistinguishable facilities from a technical perspective, it is logically impossible to conclude that a CLEC could be "impaired" in the provision of telephone exchange service over a special access facility, and not similarly impaired in the provision of exchange access over the same facility.[25] AT&T's rather colorful summary of its argument states it best:

> To illustrate, if the supply of steel were monopolized and steel were thereby difficult to obtain, it would impair all manufacturing that depends on steel, whether of automobiles or girders. If loops and transport facilities are difficult to obtain, then the competitive provision of *all* services that depend on those facilities will similarly be impaired across the board.[26]

It would certainly be difficult to argue with the foregoing formulation if it accurately described what is happening in this proceeding. Fortunately (or, from AT&T's perspective, unfortunately), the issues in this proceeding do not resemble the AT&T steel example at all.

AT&T's example begins to fall apart when we read the last sentence of the quoted paragraph carefully: "If loops *and* transport facilities are difficult to obtain . . ." Under current rules, AT&T can obtain an unbundled loop and use it to provide exchange access to a customer. AT&T can also purchase unbundled transport and use it to provide exchange access to that same customer. Unbundled loops and unbundled transport are not at issue in this proceeding. AT&T can clearly build either automobiles or girders with its dearly purchased steel.

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[25] Id. at 9-11.

[26] Id. at 3 (emphasis in original).

And that's where the initial difference surfaces. The special access circuits which AT&T demands be "flipped" to UNE prices really involve a combination of transport and loop UNEs -- a combination performed by the ILEC, not by AT&T (which already has the right to combine UNEs to its heart's content in its collocation space). And that's where the proper application of the impairment standard comes in: Whether AT&T's ability to provide exchange access would be impaired if this particular combination of UNEs were not made available for the provision of exchange access service. And very clearly AT&T's ability to provide exchange access service is in no way impaired by its inability to "flip" special access circuits to that purpose -- not a shred of evidence has been produced to suggest such a conclusion.

To AT&T's rejoinder that, market analysis or not, different services cannot be differently impaired over the same facility,[27] the answer is simple. For the most part, a pre-combined loop-transport combination used to provide exchange access will not be the same facility as is used to provide telephone exchange service. Exchange access circuits lead to an IXC POP, while circuits used to provide telephone exchange service connect back into the local exchange. Whether AT&T's ability to provide telephone exchange service to local customers is impaired without access to a pre-combined high-capacity UNE transport-loop combination, there is no similar impairment for the provision of special access.

There may be times when a CLEC uses a high-capacity circuit for both exchange access and telephone exchange service. Efficiencies which can be realized from such joint usage are recognized in the Commission's recognition that, if the impairment test is

[27] Id. at 9-11.

met by a CLEC's carriage of "substantial" amounts of local exchange traffic over a circuit, exchange access traffic can be carried over the circuit as well. In this context, if a circuit that was originally ordered for the purpose of providing telephone exchange service ceases to carry a substantial amount of local exchange traffic, the circuit is no longer being utilized for a purpose which is recognized as eligible for UNE designation under the Act. The "substantial usage" part of the Commission's proper recognition of the difference between combinations used for exchange access service and telephone exchange service in this context is not a "usage restriction" at all -- it is simply a shorthand method for the Commission to apply the impairment test while permitting CLECs to efficiently configure their networks without violating the impairment test.[28]

A special access circuit ordered for the purpose of providing exchange access does not meet the impairment test -- and, under the Act, this order does not need to be filled. That is because the ability of a CLEC to provide exchange access is not impaired by the lack of access to this combination of UNEs. That is not a use restriction. The "substantial" local exchange use which the Commission adopted does not limit the use to which a special access circuit (priced at UNE rates) can be put. Instead, the Commission simply insists, or the Act requires, that a CLEC's UNEs be utilized for purposes which pass the impairment test.

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[28] The Commission could have selected among a variety of regulatory options in deriving a way of recognizing that the impairment analysis for exchange access facilities is different than the impairment analysis for telephone exchange service facilities. For example, it could have exempted circuits between a customer premise and an IXC POP from unbundling. No one has contended on this record that the Commission failed to adopt the optimal approach to the recognition of the difference between exchange access and telephone exchange service. Most CLECs, like AT&T, content themselves with arguing that there is no difference at all. See Public Notice at 1-2.

But even if interpreting Section 251(d)(2)(D) of the Act to recognize that carriers are not impaired in the provision of exchange access without access to a special access circuit at UNE prices was tantamount to a usage restriction, this still would not mean that the Act would be traduced by the Commission's application of the impairment standard. The Act does not require that UNEs available under the Act for one service be available for unlimited use having nothing to do with the impairment test. The silliness of this position is apparent on its face. Under AT&T's logic, for example, because switching is deemed to meet the impairment test for local service, AT&T could demand the right to purchase the entire capacity of an ILEC's switch and utilize it as part of its toll network. The Act most assuredly does not contemplate any such result.

Perhaps the most telling blow to the AT&T position here can be derived from AT&T's own language. AT&T contends:

> Once the Commission determines that a carrier would be impaired without access to a particular "facility, functionality, or capability" provided by a network element, section 251(c)(3) unambiguously mandates that the network element must be available to competitive carriers for use in the provision of *any* telecommunications service that uses the element as an input. *See* 47 U.S.C. § 251(c)(3).[29]

Compelling language. Unfortunately, the language comes from AT&T, not Congress. The word "any," emphasized strongly in the AT&T argument appears only once in Section 251(c)(3) of the Act, a reference to "any requesting telecommunications carrier," not any telecommunications service. AT&T simply edited the Act to suit its purposes. In fact, the Act's actual language supports the Commission's position:

[29] AT&T at 10 (emphasis in original).

> An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide *such* telecommunications services.[30]

Such "telecommunications services" refers, in the best reading of the Act, to the services which meet the impairment test, not to anything the CLEC wants to provide.

In short, the AT&T position is an effort to substitute legal agility for the sound analysis required by the Commission. Because the use of pre-combined UNE loop transport combinations does not meet the impairment test, CLECs may not demand such combinations under the Act, even when similar combinations do meet the impairment test when used for other purposes. The analysis is simple and straightforward, and both authorized and compelled by the Act.[31]

IV. IT WOULD NOT BE LAWFUL FOR THE COMMISSION TO ATTEMPT TO RELIEVE ILEC TARIFF CUSTOMERS OF THE TERMINATION LIABILITY OBLIGATIONS IN THEIR CONTRACTS

Several commenting parties suggest that the Commission should issue a rule permitting them to terminate their special access agreements prematurely without complying with the termination provisions of those agreements.[32]

These parties are suggesting that the Commission in essence declare that the termination liability provisions in Qwest's special access tariffs are "in violation of any of the provisions of [the Communications Act]" pursuant to Section 205(a) of the Act.[33] Such a finding can be made only "after full opportunity for hearing, upon a complaint or

[30] 47 U.S.C. § 251(c)(3) (emphasis supplied).

[31] See Qwest Comments at 21-23.

[32] See, e.g., Focal at 12-14.

[33] 47 U.S.C. § 405(a).

under an order for investigation and hearing made by the Commission on its own initiative. . .” No such action has been undertaken, or is even contemplated.

Moreover, the Commission could not justify exempting CLECs from the termination liability obligations of Qwest’s tariffs (obligations which they voluntarily undertook in order to obtain lower prices in return for commitments which permitted Qwest to make more balanced investment and service decisions) even if it followed the procedures established for declaring part of an existing tariff unlawful. There is no claim that the termination liability provisions of Qwest’s special access tariffs are unlawful. Indeed, these provisions are closely related to the cost of providing the service, and are totally lawful. The claim is simply that CLECs seeking to obtain cheaper UNE rates for special access circuits should be able to obtain both this arbitrage opportunity immediately as well as retain the benefit which they obtained from committing to a longer term when they purchased special access circuits under tariff. No matter what one thinks about the other issues raised in this proceeding, it is clear that the termination liability provisions of Qwest’s special access tariffs cannot be declared in violation of the Act on the basis of a CLEC’s desire to flip such a circuit to UNE prices.

V. QWEST’S PROCESSES FOR CONVERTING EXISTING SPECIAL ACCESS CIRCUITS TO UNEs FOR THE PROVISION OF LOCAL EXCHANGE SERVICE ARE REASONABLE AND IN COMPLIANCE WITH THE COMMISSION’S RULES AND POLICIES

Several CLECs attack ILEC processes for converting high capacity special access services offered under tariff to UNEs, claiming that ILECs (in some cases Qwest specifically) do not pay proper respect to the law in their operations in this area. For example:

> ILECs must not be allowed to establish "pre-audit" or other criteria that are inconsistent with, or more burdensome than, a CLEC letter self-certifying that it meets the FCC's "significantly local standard.[34]
>
> …in e.spire's experience, Qwest has conducted pre-audits of e.spire's EEL conversion requests, and looked to e.spire's multiplexed DS3 in determining whether a "significant amount of local exchange service" exists under tests laid out in the *Supplemental Order Clarification.* Based on this misreading, Qwest has unilaterally rejected virtually all of the circuits e.spire requested for conversion.[35]
>
> The inability of Focal and other CLECs to convert circuits to EELs are plainly due to the foot-dragging of the ILECs. The *ex parte* letter ALTS submitted on December 22, 2000 detailed the conversion problems that numerous CLECs are having with Verizon, SBC and Qwest.[36]
>
> Once the Commission issued its Supplemental Order Clarification, other RBOCs -- Qwest for example -- subjected Global Crossing's existing network configuration to scrutiny to determine if Global Crossing qualified under one of the Commission's three tests for determining whether it was carrying a significant amount of local traffic in order to convert its existing facilities to UNE-Cs. Not surprisingly, because Global Crossing had configured its facilities efficiently to carry both local and long distance traffic, most of its mixed-use special access circuits did not qualify for conversion.[37]

For the most part, these additional complaints simply express disagreement with the Commission's rule which permits an ILEC to decline to allow "commingling" of UNE circuits and tariffed special access circuits over a single ILEC transport vehicle. While CLECs may complain that the commingling rules are not appropriate, it is certainly not fair or accurate to accuse ILECs of bad faith when the ILECs are complying

[34] ALTS at 3.

[35] Joint Commenters at 8.

[36] Focal at 4 (footnote omitted)

[37] Global Crossing at 5.

with the Commission's existing rules. As we discussed in our initial comments,[38] the commingling rules are a fair and, indeed, vital part of the structure recognized and mandated by the Act, insofar as they recognize that fundamental symmetry requires that at least some difference be maintained between UNEs and tariffed services. But, in all events, it is not reasonable to accuse ILECs of some type of misconduct when the conduct complained of is expressly permitted by the Commission's rules themselves.

Moreover, as was pointed out in our initial comments, Qwest's processes for dealing with requests that high-capacity special access circuits be converted to UNEs for the provision of local exchange service are fair and reasonable.[39] For example, Qwest's procedures for processing requests for EELs (enhanced extended loops) are detailed on its Web site, located at http://www.qwest.com/wholesale/pcat/eel.html. These processes are quite explicit and fair, and include a number of user-friendly innovations not required by the FCC's rules. No one has commented on the Qwest EELs policies and processes with reference to this publicly-available document.

Some comment on one specific allegation is appropriate. Qwest requests that CLECs submit a spreadsheet with specific information to pre-validate circuits for conversion to EELs. The process was developed to ensure that only qualified circuits are converted, saving the CLEC the expense of issuing and Qwest the expense of processing orders for non-qualified circuits. Qwest developed this tool to assist the CLEC in providing the required information for their list of eligible circuits to be converted to

[38] Qwest Comments at 19-21.

[39] Id. at Attachment, letter from Melissa E. Newman, Qwest, to Jodie Donovan-May, Federal Communications Commission dated April 5, 2001.

EELs and to reduce the service delivery delays that would ensue if Qwest were faced with large quantities of requests that plainly did not qualify for conversion.

In the period immediately following the issuance of the Supplemental Order, some CLECs were simply submitting blanket requests for conversion of circuits to UNE prices without any knowledge as to whether the circuit qualified for conversion under the Commission's rules or not. One CLEC submitted over 2400 circuits for pre-qualification at one time. It is impossible for Qwest to perform the pre-qualification function on this many circuits without the correct information being provided. Instead of receiving lists of *only* those circuits that the CLEC claims are eligible for conversion, Qwest has received lists of *all* circuits from several CLECs, who then expected Qwest to determine which circuits met the criteria for conversion (information within the control of the CLEC). Thus, a process was necessary to allow CLECs the opportunity to identify their own eligible circuits when submitting a conversion request. Some CLECs have even refused to provide the local usage certification as outlined in the FCC Supplemental Order.

As is described on Qwest's website, the pre-qualification test determines whether: a) the circuit exists in Qwest billing records; b) the end-user name and address on the template match that on the Qwest billing records; c) if certified under Option 1 or 2, whether the circuit involves collocation; and d) whether the circuit will be connected to a Qwest tariffed service, otherwise known as "commingling". The pre-qualification process is not burdensome, and Qwest allows CLECs to submit their EELs conversion orders without advance pre-qualification spreadsheets if the orders are submitted one circuit per order with an entire facility submitted at the same time. i.e., if submitting 1

DS1, all 24 DS0s riding that facility would be submitted. In all events, Qwest's UNE conversion process is fair and reasonable, including the pre-qualification process described here and on the Qwest website.

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April 30, 2001

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST CORPORATION** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) a copy of the **REPLY COMMENTS** to be served, via hand delivery, on all parties listed on the attached service list marked with an asterick (*), and 3) a copy of the **REPLY COMMENTS** to be served, via first class United States mail, postage prepaid, upon all other parties listed on the attached service list.

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Richard Grozier

April 30, 2001

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